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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,928	02/25/2004	Akihiro Ozaki	2004_0292A	9601

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WENDEROTH, LIND & PONACK, L.L.P.
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WASHINGTON, DC 20006-1021

EXAMINER

DEB, ANJAN K

ART UNIT	PAPER NUMBER
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2858

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/784,928

Applicant(s)

OZAKI ET AL.

Examiner

Anjan K. Deb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>09/02/2004, 07/16/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-12 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,919,845 B2 to Ozaki et al in view of Hankui (US 5,789,929 A). Although the conflicting claims are not identical, they are not patentably distinct from each other because U.S. Patent No. 6,919,845 B2 (claim 1) recites apparatus for measuring a specific absorption rate (SAR) of a radio communication apparatus, comprising:

Re claim 1, a first measurement device for measuring in free space a first near magnetic field distribution of a radio wave radiated from a reference antenna;

a second measurement device for measuring a specific absorption rate (SAR) distribution with respect to the radio wave radiated from said antenna, with a predetermined phantom using a predetermined measuring method;

a first calculation device for calculating a distribution of a transformation coefficient α by dividing said measured specific absorption rate (SAR) distribution by a square of said measured first near magnetic field distribution;

a third measurement device for measuring in free space a second near magnetic field distribution of a radio wave radiated from a radio communication apparatus to be measured; and

a second calculation device for estimating and calculating a specific absorption rate (SAR) distribution with respect to the radio wave radiated from said radio communication apparatus to be measured, by multiplying a square of said measured second near magnetic field distribution by said calculated distribution of the transformation coefficient α .

Re claims 1, 2, 5, 8 and 9, U.S. Patent No. 6,919,845 B2 recites all of the claimed limitations indicated above except array antenna including a plurality of minute dipole antennas spaced at equal intervals to form parallel and orthogonal beams (Fig. 5).

Hankui (US 5,789,929 A) disclosed SAR measuring device comprising array antenna having N minute electric dipoles 14 spaced at equal intervals (L) to form orthogonal beams (orthogonally-intersecting magnetic fields)(abstract) (Fig. 5).

At the time the invention was made it would have been obvious for one of ordinary skill in the art to modify U.S. Patent No. 6,919,845 B2 by claiming array antenna comprising a

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plurality of equally spaced minute dipole antennas (dipoles) and to form orthogonal beams as disclosed by Hankui and parallel beams for irradiating an object with electromagnetic wave.

Re claims 3, 4, 6 and 7, U.S. Patent No. 6,919,845 B2 recites all of the claimed limitations indicated above except the specific arrangement of the antenna.

At the time the invention was made it would have been obvious for one of ordinary skill in the art to modify U.S. Patent No. 6,919,845 B2 by claiming the specified dipole antenna arrangement (configuration) [see MPEP 2144.04 below regarding obviousness of arrangement (configuration)] to irradiate a phantom with electromagnetic wave as disclosed by Hankui to make antenna suitable for the intended use to irradiate phantom with electromagnetic wave.

Re claims 10-12, U.S. Patent No. 6,919,845 B2 recites all of the claimed limitations indicated above except flat-plane shaped dipole antenna having different size conductors of a reference antenna and impedance matching network.

[MPEP: 2144.04 B. **Changes in Shape.** In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). The court held that the claimed shape (configuration) was a matter of choice, which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular shape (configuration) was significant.]

Hankui (US 5,789,929 A) disclosed prior art SAR measuring device comprising dipole antenna 205 to irradiate phantom 20 with electromagnetic wave 209 (Fig. 1).

At the time the invention was made it would have been obvious for one of ordinary skill in the art to modify U.S. Patent No. 6,919,845 B2 by claiming dipole antenna to irradiate a phantom with electromagnetic wave as disclosed by Hankui and by making flat-plane shaped antenna with different size conductors to make antenna suitable for the intended use of irradiating phantom with electromagnetic wave and by adding impedance matching circuit which is well known in the art as required for maximum energy transfer.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

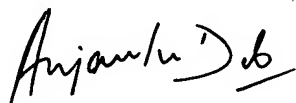
Merckel et al. (WO 2004/079299 A2) discloses method and system for measuring specific absorption rate (SAR) comprising probe 6 for measuring SAR in phantom 3 by radiation from antenna 2 (Fig. 1).

Onishi et al. (US 2006/0012530 A1) discloses SAR measuring apparatus comprising magnetic field generated in phantom 2 and calculating SAR from measured electric and magnetic field (Fig. 3)

Howard (US 6,603,440 B2) discloses impedance matched array antenna to exchange radiation energy at a radiation frequency (abstract).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Anjan K. Deb whose telephone number is 571-272-2228. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew H. Hirshfeld can be reached at (571) 272-2168.



Anjan K. Deb, P.E, Ph.D.

Primary Patent Examiner

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1/18/07

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